

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Dean R. Anderson, et al.,

File No. 18-cv-1672 (PJS/LIB)

Plaintiffs,

v.

REPORT AND RECOMMENDATION

1399557 Onterio LTD, et al.,

Defendants.

This matter came before the undersigned United States Magistrate Judge upon the routine supervision of the cases that pend before the Court pursuant to a general assignment made in accordance with the provisions of Title 28 U.S.C. 636.

Plaintiffs commenced the present action on June 15, 2018, and named as Defendants Fibertec, Inc.; Above and Beyond Construction, Inc.; Arlo Cooker; and E Ship One, Inc. (Compl. [Docket No. 1]).

On July 17, 2018, the undersigned issued an Order, [Docket No. 8], observing that it appeared that more than twenty-one (21) days had elapsed since Defendants were served with a summons and a copy of the Complaint in the present case, and that Defendants had yet to respond to the Complaint or otherwise enter appearances in the present case. The Order instructed Plaintiffs to: (1) Notify Defendants within three business days that they were each required to file a responsive pleading or move for an extension of time to do so; and (2) file an application for entry of default against Defendants unless within 5 business days, Defendants each filed the required pleading or advised the Court in writing of any good cause for not doing so. (Order [Docket No. 8]). The Court forewarned Plaintiffs that unless Plaintiffs' counsel

complied with the Order within twenty days of its date of issuance, the undersigned would recommend dismissal of this case for failure to prosecute. (Id.).

After the issuance of this Court's July 17, 2018, Order, Defendants Fibertec, Inc.; Above and Beyond Construction, Inc.; and Arlo Cooker responded to Plaintiffs' original Complaint. (Answers [Docket Nos. 10, 19]). Defendant E Ship One, Inc. did not respond to the original Complaint.

On November 20, 2018, Plaintiffs filed an Amended Complaint, [Docket No. 22], which corrected the name of two of the Defendants. Plaintiffs' Amended Complaint correctly identified Fibertec, Inc. as Defendant 1399557 Onterio LTD, and the Amended Complaint correctly identified Arlo Cooker as Defendant Arlo Cook. The Amended Complaint still names E Ship One, Inc. as a Defendant.

Defendants 1399557 Onterio LTD, Above and Beyond Construction, and Arlo Cook have filed their respective Answers to Plaintiffs' Amended Complaint. [Docket Nos. 28, 29]. Defendant E Ship One, Inc. has not answered or otherwise responded to the Amended Complaint.

Accordingly, on January 7, 2019, the undersigned issued an Order, [Docket No. 32], observing that it Plaintiffs had failed to yet provide the Court with proof demonstrating that they had served a summons and a copy of the Amended Complaint on Defendant E. Ship One, Inc. The Order instructed Plaintiffs to provide proof of service or demonstrate good cause for an extension of time to serve Defendant E. Ship One, Inc. with a copy of the Amended Complaint. The Court forewarned Plaintiffs that unless Plaintiffs' counsel complied with the Order within twenty days of its date of issuance, the undersigned would recommend dismissal of this case for failure to prosecute. (Id.).

It has now been more than twenty (20) days since the Court's January 7, 2019, Order, and Defendant E Ship One, Inc. has not yet answered or otherwise appeared in the present case. Plaintiffs have neither filed an application for entry of default against Defendant E Ship One, Inc., nor have Plaintiffs advised the Court of any good cause for such failure.

Consequently, the Court finds that Plaintiffs have failed to abide by the terms of the Court's Order of January 7, 2019. [Docket No. 32]. Because the Court forewarned Plaintiffs of the potential consequences of their failure to abide by the Court's Order, the Court recommends that Defendant E Ship One, Inc., be dismissed from this action for Plaintiffs' failure to comply with the Court's Order of January 7, 2019, [Docket No. 32], and for lack of prosecution.

Based on the foregoing and all of the files, records and proceedings herein, **IT IS HEREBY RECOMMENDED THAT** Defendant E Ship One, Inc., be **DISMISSED without prejudice** from this action for Plaintiffs' failure to comply with the Court's Order of January 7, 2019, [Docket No. 32], and for lack of prosecution.

Dated: April 3, 2019

s/Leo I. Brisbois
Hon. Leo I. Brisbois
U.S. MAGISTRATE JUDGE

N O T I C E

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “A party may file and serve specific written objections to a magistrate judge’s proposed findings and recommendation within 14 days after being served with a copy of the recommended disposition[.]” A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in LR 72.2(c).